

permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

#### **§ 4.312 Decisions.**

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

#### **§ 4.313 Amicus Curiae; intervention; joinder motions.**

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be served in the same manner as appeal briefs.

#### **§ 4.314 Exhaustion of administrative remedies.**

(a) No decision of an administrative law judge or an official of the Bureau

of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

#### **§ 4.315 Reconsideration.**

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

#### **§ 4.316 Remands from courts.**

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

#### **§ 4.317 Standards of conduct.**

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in

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accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

#### § 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

#### APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

#### § 4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal

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not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall include a certification that service was made as required by this section.

(c) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

#### § 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

#### § 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.